

Remarks

In response to the subject Office action 02 June 2006, the Examiner has asked that the Applicant make an election of species:

Species 1: figs. 15-16 (“ball ends”)

Species 2: figs. 21-23 (“looped ends”)

Species 3: figs. 27-28 (“hook ends”)

Subspecies 1: figs. 29-30 (“helical actuation coil”)

Subspecies 2: figs. 33-34 (“diverging petals”)

Subspecies 3: fig. 35 (“reduced radius points”)

The Examiner indicates that under 35 U.S.C. 121 the species are independent or distinct because they relate to different technical features that provide different results when used. For instance species 1 requires a ball end to provide atraumatic contact with tissue, while species 3 requires hooked ends for traumatic contact with tissue. Further, subspecies 1 and subspecies 2 provide different mechanisms for aiding the device in moving from a first configuration to a second configuration. Applicant is required to elect a single disclosed species and subspecies for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner has indicated that no claim is deemed generic.

In response thereto, Applicant elects Species 2 (“looped ends”) and Subspecies 2 with specific claims associated with the species and subspecies as listed in Table 1 below:

Claim	Status	Depends	Asserted Species Covered	Elected Species
1	original		Species 1, 2 and 3	Species 2
2	original	1	Species 1	Species 1
3	original	1	Species 2	Species 2
4	original	1	Species 3	Species 3
5	original		Subspecies 1	Subspecies 1
6	original	5	Subspecies 1	Subspecies 1
7	original	5	Subspecies 1	Subspecies 1
8	original	5	Subspecies 1	Subspecies 1
9	original	5	Subspecies 1	Subspecies 1
10	amended		Subspecies 2 and 3	Subspecies 2
11	original	10	Subspecies 3	Subspecies 3
12	original	10	Subspecies 1	Subspecies 1
13	original	12	Subspecies 1	Subspecies 1
14	original	12	Subspecies 1	Subspecies 1
15	original	10	Species 1, 2 and 3	Species 2
16	original	15	Species 1	Species 1
17	original	15	Species 2	Species 2
18	amended	15	Species 3	Species 3
19	new	1	Subspecies 2 and 3	Subspecies 2
20	new	19	Subspecies 2	Subspecies 2
21	new	19	Subspecies 3	Subspecies 3
22	new	19	Subspecies 1	Subspecies 1
23	new	10	Subspecies 2	Subspecies 2

Table 1. Claim elections.

Applicants traverse the restriction requirement. First, claim 1 and 15 are directed to features of including unattached ends of a strand that forms an anastomotic device. This feature enhances the manufacturability of such devices by eliminating a need to constrain the pattern to have these ends meet up and then to be joined. The unattached ends feature is generic to Species 1, 2 and 3. Applicants do agree that Species 1 and 2 may be selected if atraumatic contact is preferred whereas Species 3 may be selected if traumatic contact is preferred. Having elected the looped end Species 2, Applicants note the physical similarity with hooked ends Species 3 and the functional similarity to ball ends Species 1. Applicants suggest that examination of Species 2 would necessarily result in examination of all three Species.

Applicants concede that Subspecies 1 of a helical actuating coil may be used separately with generally-known anastomosis devices or combined with one or more of the other features to enhance actuation and to broaden the range of materials from which an anastomosis device may be made. Given the unattached ends of the Subspecies 1 and its synergistic inclusion on a very

specific type of surgical implant, Applicants suggest that examination should include this subspecies without increasing the scope of the search, although not elected as the subspecies for examination..

Applicants further assert that amended independent claim 10 and new dependent claim 19 are directed to diverging portions or an overlying portion and underlying portion of adjacent circumferential petals, this feature asserted as generic to Subspecies 2 and 3.

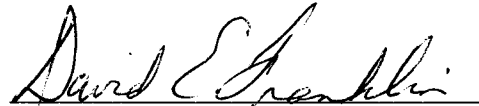
Conclusion

In light of the amendments and remarks made herein, it is respectfully submitted that the claims currently pending in the present application are in form for allowance. Accordingly, reconsideration of those claims, as amended herein, is earnestly solicited. Applicants encourage the Examiner to contact their representative, David Franklin at (513) 651-6856 or dfranklin@fbtlaw.com.

Applicants give permission for payment for the extra three claims. The Commissioner for Patents is hereby authorized to charge any deficiency or credit any overpayment of fees to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully submitted,

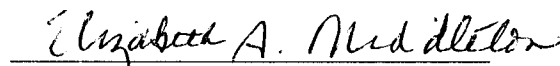
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CERTIFICATE OF MAILING

I hereby certify that a copy of this correspondence is being deposited with the US Patent Office by electronic transmission addressed to MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 this 30th day of June, 2006.


Elizabeth A. Middleton